



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/153344

PRELIMINARY RECITALS

Pursuant to a petition filed November 07, 2013, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on November 26, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined petitioner's FS effective October and November 2013.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On October 17, 2013 petitioner applied for FS for herself and her three grandchildren.
3. By October 17, 2013 the agency had already processed and issued the FS for petitioner's three grandchildren on their mother's case for October and November 2013.

4. On October 31, 2013 the agency issued a notice of decision to petitioner stating that her three grandchildren were not eligible for FS on her case for October and November 2013 as the FS had already been issued to them on another case (their mother's). See Exhibit 4. They were added to petitioner's case effective December 1, 2013.

DISCUSSION

FoodShare regulations state that a household is composed of a "group of individuals who live together and customarily purchase food and prepare meals together for home consumption." See 7 C.F.R. §273.1(a). Wisconsin's policy is clear in requiring that the child cannot be a member of more than one FS group in the same month. The policy is found in the *FoodShare Wisconsin Handbook*, §3.4.1, available online at <http://www.emhandbooks.wi.gov/fsh/>, and provides the following guidance in these situations:

A person cannot be a member of more than 1 food unit and 1 *FS* group in the same month except residents of shelters for battered women and children.

Persons moving to Wisconsin from another state are not eligible to receive duplicate FS benefits. States typically issue benefits on either a calendar or fiscal month. A fiscal month cycle provides benefits from a date in one month to a corresponding date in the next month. California (Fresno), Massachusetts, Nevada and South Dakota issue on a fiscal month cycle. Illinois issues benefits by calendar month (first day through the last day of the month) and by fiscal month (16th through 15th). Wisconsin issues on a calendar month cycle.

FS Handbook, §3.4.1; see also 7 CFR 273.3(a).

At the hearing, the petitioner agreed that the children had been receiving FS on their mother's case but that petitioner had actually received custody of them on October 1, and that their mother would not share the FS she received for them.

The agency budgets FS prospectively on a calendar month cycle. See *FS Handbook*, §§1.2.4 and 3.4.1. Thus, October's and November's FS had already been determined for the mother before any request made by petitioner. There is no exception to this policy. Thus, I must find that the agency properly denied the FS as to her grandchildren for October and November because the children were already receiving FS on their mother's case.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The agency correctly determined petitioner's FS effective October and November 2013.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 17th day of December, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 17, 2013.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability